IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 658 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMBHAI MANABHAI MASAR
Versus
STATE OF GUJARAT

Appearance:
MR US BRAHMBHATT for Appellant No. 1
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellant came to be convicted by virtue of a judgment and order rendered by Additional Sessions Judge, Sabarkantha camping at Modasa in Sessions Case No.83 of 1993 on April 25th, 1994 for the offence punishable under Section 302 of the I.P.C. and was sentenced to undergo imprisonment for life and to pay a fine of Rs.200/-, in default, to undergo imprisonment for 15 days.

2. Brief facts of the case are that the appellant Ramabhai Manabhai Masar is alleged to have made some purchase due to which he was scolded by his father Manabhai Rumalbhai on April 26th, 1993 at about 2215 hours. The appellant is alleged to have assaulted his father deceased Manabhai Rumalbhai with a wooden log and have caused serious injury on his face and head to which Manabhai Rumalbhai ultimately succumbed. As per the prosecution case, the incident was witnessed by Jamnaben Manabhai, mother of the appellant and Nandaben Manabhai, sister of the appellant. After the incident, as per the prosecution case, Jamnaben informed Madansinh Ramsinh Jadeja and thereafter, they went to police and Jamnaben lodged the First Information Report with Meghraj police. The Meghraj police registered the offence vide C.R. No. I-28/93. After investigation, having found sufficient evidence, the Investigating Officer submitted his report under Section 173 of Cr.P.C. before JMFC, Modasa. The learned JMFC, Modasa, after following the procedure, committed the case to the Court of Sessions and Sessions Case No.83 of 1993 came to be registered.

3. Charge was framed against the appellant at Exh.2. He pleaded not guilty to the charge and faced the trial. Considering the evidence led by the prosecution, the learned Additional Sessions Judge, Sabarkantha camping at Modasa came to the conclusion that the charge against the appellant was proved and he, therefore, recorded conviction by the impugned judgment and order.

4. Aggrieved by the said judgment and order, the appellant has preferred this appeal.

5. Learned advocate Mr. Brahmbhatt appearing for the appellant submitted that if the record of the Trial Court is seen, it is apparent that the only two eye-witnesses namely complainant Jamnaben and witness Nandaben have not supported the prosecution case. Therefore, there is no direct evidence against the appellant. The only material that is relied upon for recording the conviction is in the form of discovery of the wooden log and finding of a blood-stain on the

trouser of the appellant of the group of the deceased and, therefore, Mr. Brahmbhatt submitted that the conviction is recorded in the absence of cogent evidence. He, therefore, urged that the appeal may be allowed.

6. Learned Additional PP Mr. Jani has opposed this appeal.

7. We have gone through the record and proceedings and have closely considered the evidence.

8. As rightly pointed out by learned advocate Mr. Brahmbhatt, the eye-witnesses namely, Jamnaben (Exh.7) and Nandaben (Exh.9) have not supported the prosecution case. Jamnaben, in her deposition, pleads total ignorance about the incident. She says that herself and her deceased husband, appellant and daughter Nanda were at home. They went to sleep after having their dinner. What happened during the night in the room, she does not know. When she woke up at 11 o'clock in the night, she found that her husband was dead. She does not know as to who had murdered him. She said that her husband was sleeping outside the house.

8.1 Nandaben (Exh.9) also pleads total ignorance. She says that her brother, the appellant, had gone to the field at night. On being woken up by her mother, she found that her father had expired. She has been declared hostile and in cross-examination by the prosecution, she sticks to her version. She denies the suggestion that the appellant had inflicted three blows with wooden log on the head of deceased Manabhai.

8.2 The other witness who has been examined is Kanubhai Manabhai (Exh.10) who also does not support the prosecution case.

8.3 Discovery Panch Chandusinh Balusinh Jadeja (Exh.11) states that the accused had discovered the wooden log in his presence and in the presence of another Panch Amarsinh Lalsinh Jadeja. He says that the wooden log was blood-stained.

8.4 Witness Mukeshkumar Pranlal (Exh.14) stated that Muddamal article no.7 was recovered from the appellant under a panchnama.

8.5 The Forensic Science Laboratory report indicates that the quilt on which the dead body was found, the clothes of the deceased and the wooden log as well as the trouser of the appellant all carry human blood of group

'B'. The other Muddamal articles also carry the same blood group.

9. The evidence, thus, if considered, indicates that there is no direct evidence on record to implicate the appellant. Though the investigating agency had collected such evidence, the prosecution has not been able to bring that evidence on record as the witnesses have not supported the prosecution case.

10. The other evidence in the form of circumstantial evidence is the discovery of the wooden log by the appellant containing blood group of the deceased. This discovery, by itself, cannot connect the appellant with the crime. Discovery under a panchnama drawn under Section 27 of the Evidence Act only indicates authorship of the concealment of the weapon and not the use of the weapon by the discoverer in the commission of the crime.

11. Then, what is left is the trouser of the appellant containing blood of the group of the deceased. This, by itself, cannot be a ground for connecting the appellant with the offence. When the evidence is in the nature of circumstantial evidence, there has to be a complete chain of circumstances and a solitary circumstance cannot form that chain, considering the evidence as it is. There is no evidence led by the prosecution that the appellant did not have any injury on his person either at the time of arrest or any earlier moment. Likewise, the possibility of that blood stain being from any other source also cannot be ruled out.

12. Over and above all these aspects, there is evidence of Nandaben who says that the appellant had gone to the field after having dinner on the relevant date.

13. In view of the above discussion, considering the evidence that is on record, in our opinion, conviction could not have been recorded by the Trial Court. The prosecution cannot be said to have established the charge against the appellant by cogent evidence and, therefore, conviction ought not to have been recorded.

14. In our opinion, the appeal deserves to be allowed and the same is, therefore, allowed. The judgment and order rendered by Additional Sessions Judge, Sabarkantha camping at Modasa in Sessions Case No.83 of 1993 on 25th April, 1994, impugned herein, is hereby quashed and set aside. The appellant is acquitted of the charge levelled against him. He be set at liberty forthwith, if not required in any other case. Fine, if paid, be refunded

to him.

(M.C. Patel, J.)

(A.L. Dave, J.)

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